

## Article 4. Rules and Definitions.

### 16-401 RULES.

- 401.1 In the application of these regulations, the provisions and rules of this section shall be preserved and applied, except when the context clearly requires otherwise:
- A. Words used in the present tense shall include the future.
  - B. Words in the singular number include the plural number, and words in the plural number include the singular number.
  - C. The phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for".
  - D. The word "shall" or "must" is mandatory.
  - E. The word "may" is permissive.
  - F. The word "person" includes individuals, firms, corporations, associations, governmental bodies and agencies, and all other legal entities.
  - G. The word "Board" means the Board of Zoning Appeals.
  - H. Unless otherwise specified, all distances shall be measured horizontally.
  - I. The word "City" means City of Gardner, Kansas.
  - J. The word "building" includes the word "structure".
  - K. The abbreviation N/A means not applicable.
- 401.2 Any word or phrase which is defined in this article or elsewhere in these regulations shall have the meaning as so defined whenever the word or phrase is used in these regulations, unless such definition is expressly limited in its meaning or scope.

### 16-402 INTERPRETATION.

- 402.1 MINIMUM REQUIREMENTS. In their interpretation and application, the provision of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.
- 402.2 OVERLAPPING OR CONTRADICTORY REGULATIONS. Where the conditions imposed by any provision of these regulations upon the use of land or structures are either more restrictive or less restrictive than comparable conditions imposed by any other provision of these regulations or any provision of any other law, ordinance, resolution, rule or regulations of any kind, the regulations which are more restrictive shall govern.
- 402.3 PRIVATE AGREEMENTS. These regulations are not intended to abrogate, annul or otherwise interfere with any easement, covenant or any other private agreement or legal relationship; provided, however, that where the provision of these regulations are more restrictive (or impose

higher standards or requirements) than such easements, covenants or other private agreements or legal relationships, the provisions of these regulations shall govern.

- 402.4 UNLAWFUL USES. Any structure or use which was not lawfully existing at the time of the adoption of these regulations shall not become or be made lawful solely by reason of the adoption of these regulations; and to the extent that, and in any respect that, said unlawful structure or use is in conflict with the requirements of these regulations, said structure or use remains unlawful hereunder.

16-403 SEPARABILITY. It is hereby declared to be the intention of the City that the provisions of these regulations are separable, in accordance with the following rules:

- 403.1 If any court of competent jurisdiction shall adjudge any provision of these regulations to be invalid, such judgment shall not affect any other provisions of these regulations.
- 403.2 If any court of competent jurisdiction shall adjudge invalid the application of any provision of these regulations to a particular property or structure, such judgment shall not affect the application of said provisions to any other property or structure.

16-404 DEFINITIONS. For the purpose of this Zoning Regulation, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise.

- 404.1
- A. ACCESSORY BUILDING. A subordinate building having a use customarily incident to and located on the lot occupied by the main building; or a use customarily incident to the main use of the property. A building having an accessory use is considered an integral part of the main building, when it has any part of a wall in common with the main building, or is under an extension of the main roof and designed as an integral part of the main building.
  - B. ACCESSORY USE. A use of building or land which is customarily incident to and located on the same lot or premises as the main use of the premises.
  - C. ALLEY. A minor way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.
  - D. ALTERATION. Any addition, removal, extension, or change in the location of any exterior wall of a main building or accessory building.
  - E. ANIMAL HOSPITAL OR CLINIC. An establishment where animals are admitted principally for examination, treatment, board or cure by a doctor of veterinary medicine.
  - F. APARTMENT. A room or a suite of rooms within an apartment house arranged, intended or designed for a place of residence of a single family or group of individuals living together as a single housekeeping unit.
  - G. APARTMENT HOUSE. A building arranged, intended, or designed for more than two families.

- H. APARTMENT HOTEL. An apartment house which furnishes for the use of its tenants services ordinarily furnished by hotels, but the privileges of which are not primarily available to the public.
- I. ATTENTION ATTRACTING DEVICE. Any flasher, blinker, animation, banner or other object designed or intended to attract the attention of the public to an establishment or to a sign.
- J. BASEMENT. That portion of a building having more than one-half of its height below grade. This portion is not a completed structure and serves as a sub-structure or foundation for the remainder of the building.
- K. BED & BREAKFAST. A single family residence in which temporary lodging is provided by the owner/operator, whom resides at the facility, having no more than five (5) guest quarters for compensation, with meals served to lodgers, for use by transient guests with a maximum stay of six (6) consecutive nights. (Ord. 1842, Sec. 1)
- L. BLOCK. A piece or parcel of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the Codes Administrator shall determine the outline of the block.
- M. BOARDING HOUSE OR LODGING HOUSE. A building other than a hotel, occupied as a single housekeeping unit, where lodging or meals are provided for five or more persons for compensation, pursuant to previous arrangements, but not for the public or transients.
- N. BOARD OF ZONING APPEALS. That Board which has been created by the Governing Body to hear and determine appeals and variances to the zoning regulations.
- O. BUILDING. Any structure constructed or intended for residence, business, industry or either public or private purposes, or accessory thereto.
- P. BUILDING, HEIGHT. The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of ceiling of the top story in the case of a flat roof; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.
- Q. BUILDING, PRINCIPAL. A building, including covered porches and paved patios, in which is conducted the principal use of the lot on which it is situated. In any residence district any dwelling shall be deemed to be the principal building on the lot on which the same is situated.
- R. CENTERLINE. The center of a street right-of-way as shown on the recorded plat or survey.
- S. CLUB, PRIVATE. A building or premises used for social, recreational, dining or philanthropic purposes, the normal use of

which is limited to specific members, patrons or otherwise listed as enumerated persons.

- T. CONDOMINIUM DWELLING HOUSE. A building containing two or more dwelling units, which dwelling units are separated by a party wall and which dwelling units are designed and intended to be separately owned in fee under the condominium statutes of the State of Kansas.
- U. CONTRIBUTING FLOOR AREA. A figure in square feet consisting of eighty-five percent (85%) of the total floor area in a business or office building, including basements, mezzanines, and upper floors, if any, whether finished or not, measured from the centerline of joining partitions and from the exterior surface of outside walls. Pedestrian malls and service corridors which are common to several tenants in shopping centers shall not be included in the total floor area before the 85 percent calculation is made.
- V. COURT. An open, unoccupied space, other than yard, bounded on three or more sides by exterior walls of a building, or by exterior walls of a building and lot lines on which walls are allowable.
- W. CURB LEVEL. The mean level of the top of curb in front of the lot or, in case of a corner lot, along that abutting street where the mean curb level is the highest.
- X. DAY CARE CENTER. A building or place where care, supervision, custody or control is provided for more than four (4) unrelated children or adults for any part of a 24-hour day up to twelve hours.
- Y. DAY CARE NURSERY. A residence or building in which care, supervision, custody or control is provided for four (4) or less unrelated children or adults for any part of a 24-hour day up to twelve (12) hours. Babysitting for four (4) or less infants shall be considered a day care nursery.
- Z. DISTRICT OR ZONE. A section or sections of the zoning area for which uniform regulations governing the use of land, the height use, area, size, and intensity of use of buildings, land and open space are herein established.
- AA. DOG. Any canine species over twelve (12) months of age.
- BB. DRIVE-IN ESTABLISHMENTS. Any restaurant, financial institution or product vending enterprise where the patron does not enter and remain within a building during the transaction of his/her business. Food vending establishments where the food is not normally consumed within a building or where facilities are provided for eating outside a building, shall be included in this definition.
- CC. DWELLING. Any building or portion thereof, including modular homes but not including mobile homes, which is designed and used exclusively for residential purposes.
- DD. DWELLING, SINGLE-FAMILY. A residential building having accommodations for and occupied exclusively by one family.

- EE. DWELLING, SINGLE-FAMILY ATTACHED. A portion of a residential building having accommodations for and occupied exclusively by one family, and which is located on a separate lot of record apart from the remaining portions of the building. Each such dwelling may be sold independently of other portions.
- FF. DWELLING, TWO-FAMILY. A residential building having accommodations for and occupied exclusively by two families, independently.
- GG. DWELLING, MULTIPLE. A residential building having accommodations for and occupied exclusively by more than two families, independently.
- HH. DWELLING FOR THE ELDERLY AND/OR HANDICAPPED. A two family or multiple-family residential building having accommodations for and occupied exclusively by elderly or handicapped residents and necessary maintenance personnel. Elderly residents are those people who are at least sixty-two (62) years of age. Handicapped persons are those people having an impairment which is expected to be of long, continuous and indefinite duration, and is a substantial limitation to their ability to live independently.
- II. EARTH-SHELTERED RESIDENCE. A residence designed as a complete structure below or partially below ground level, whose perimeter walls comply with the yard requirements of the district in which it is located, and which was not intended to serve as a substructure or foundation for a building.
- JJ. FAMILY. One (1) or more patrons who are related by blood or marriage, living together and occupying a single housekeeping unit with single kitchen facilities, or a group of not more than five (5) (excluding servants) living together by joint agreement and occupying a single housekeeping unit with single kitchen facilities, on a non-profit cost-sharing basis.
- KK. FLOOR AREA. The gross area of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include the following area:
1. The basement floor area
  2. The area of each floor of the structure
  3. The attic space having headroom of seven (7) feet or more
- LL. FRONT. The part or side of any building or structure facing the street or frontage road which is used as the basis for establishing the permanent address for that building or structure, as listed in the City Directory.
- MM. FRONTAGE. All the property on one (1) side of a street between two (2) intersecting streets (crossing or terminating) measured along the line of the street. Where a street is dead ended, the frontage shall be considered as all that property abutting on one (1) side between an intersecting street and the dead end of the street.

- NN. GARAGE, COMMUNITY. A building or portion thereof, other than a repair garage, providing storage for motor vehicles but no other services, such garage to be in lieu of private garages within a block or portion of block.
- OO. GARAGE, PRIVATE. An accessory building or portion of a main building used for storage only of motor and recreational vehicles.
- PP. GARAGE REPAIR. A building or portion thereof, designed or used for the storage, sale, hiring, care or repair of motor vehicles and which is operated for commercial purposes.
- QQ. GARAGE, STORAGE. A building or portion thereof, except those defined as a private, a repair, or a community garage providing storage for motor vehicles, with facilities for washing but no other services.
- RR. GARDEN APARTMENT BUILDING. An apartment building located on a lot either singly or together with other similar apartment buildings completely landscaped, the total ground floor area of which does not exceed twenty-five percent (25%) of the area of the lot.
- SS. GASOLINE SERVICE STATION. A service station shall consist of a building or group of buildings and surfaced area where automotive vehicles may be refueled and serviced, self-service pumps without buildings shall also be included. Such service shall not include tire recapping, body repairs, or major overhaul.
- TT. HOME OCCUPATION. A business, profession, service, or trade conducted for gain or support entirely within a residential building or its accessory structures.
- UU. HOTEL OR MOTOR HOTEL. A building occupied or used as a more or less temporary abiding place of individuals who are lodged, with or without cooking facilities. (Ord. 1826, Sec. 1)
- VV. INSTITUTION. A building occupied by a non-profit establishment for public use.
- WW. KENNEL, BOARDING. Any place, area, building, or structure where dogs (including those under one year in age) are boarded, housed, cared for, fed, or training by other than the owner.
- XX. KENNEL, BREEDING. Any place, area, building, or structure where more than four dogs are kept for purposes of breeding, raising or as pets.
- YY. LOT. A parcel of land occupied or to be occupied by one main building, or unit group of buildings, and the accessory buildings or uses customarily incident thereto, including such open spaces as are required under these regulations, and having its principal frontage upon a public street. A lot as used herein may consist of one or more platted lots, tracts, or tracts as conveyed, or parts thereof.
- ZZ. LOT, CORNER. A lot abutting upon two or more streets at their intersection. A corner lot shall be deemed to front on that street on which it has its least dimension, unless otherwise specified by the Codes Administrator, except that a lot as herein defined, when made

up of more than one platted lot, shall be deemed to front on the street upon which said platted lots front.

- AAA. LOT, DEPTH OF. The mean horizontal distance from the front streetline to the rear line.
- BBB. LOT, DOUBLE FRONTAGE. An interior lot having frontage on two non-intersecting streets as distinguished from a corner lot.
- CCC. LOT, FRONT. The front of a lot shall be that narrowest dimension abutting a street right-of-way. On corner lots which have two equal sides which abut on a street right-of-way, either side may be considered the front of the lot.
- DDD. LOT, INTERIOR. A lot whose side lines do not abut upon any street.
- EEE. LOT LINES. The lines bounding a lot as defined herein.
- FFF. LOT LINE FRONT. The boundary between a lot and the street on which it fronts.
- GGG. LOT LINE, REAR. The boundary line which is opposite and most distant from the front street line; except that in the case of uncertainty the Codes Administrator shall determine the rear line.
- HHH. LOT LINE, SIDE. Any lot boundary line not a front or rear line thereof. A side line may be a party lot line, a line bordering on an alley or place, or a side street line.
- III. LOT OF RECORD. A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds or a lot described by metes and bounds, the description of which was recorded in the office of the Register of Deeds.
- JJJ. LOT WIDTH. The horizontal distance between side lines, measured at the front building line.
- KKK. LOT, ZONING. A parcel or tract of land used, developed, or built upon as a unit under single ownership or control. Said parcel or tract may consist of one or more lots of record, one or more portions of a lot or lots of record, or any combination thereof.
- LLL. MOBILE HOME. A movable or portable structure over 40 feet in length and over 8 feet wide, constructed to be towed on its own chassis, and designed with or without a permanent foundation for year-round living, whether or not a permanent foundation is subsequently provided. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit. The term "mobile home" shall not include any trailer home, camp van, or any vehicle lawfully operated on fixed rails. A modular home which can meet local building codes shall not be considered a mobile home.
- MMM. MOBILE HOME PARK. Any area, place, parcel, tract, or plot of ground equipped as required for support of mobile homes and offered for use by the owner or representative for mobile home park purposes and/or ground upon which two or more mobile homes are

parked, whether for compensation or not, including all accessory uses thereof. The term "mobile home park" does not include sales lots on which unoccupied mobile homes are parked for the purpose of inspection and sale.

- NNN. MOBILE HOME SPACE. A plot of ground within a mobile home park which can accommodate one mobile home and which provides the necessary utility services for water, sewerage, and electricity.
- OOO. MOBILE HOME SUBDIVISION. A subdivision where individual lots are sold for the placement of traditional homes or mobile homes where the lot and structure are intended to be owned by the same party.
- PPP. MODULAR HOME. A manufactured housing unit that is designed to be located on a permanent foundation and is factory certified that it conforms to local building, housing, electrical and plumbing codes.
- QQQ. NONCONFORMING STRUCTURE. A structure which does not comply with the lot size requirements or bulk regulations applicable to new structures in the zoning district in which it is located.
- RRR. NONCONFORMING USE. An existing use of a structure or land which does not conform with the regulations of the district in which it is situated as established by this regulation or any amendments hereto.
- SSS. PRIVATE CLUB, CLASS B. An establishment in which the primary function is the sale and serving of alcoholic and cereal malt beverages for profit and in which said beverages are served only to members and their guests. Provided, however, that such sale of alcoholic beverages is in compliance with applicable Federal, State and local laws.
- TTT. RESTAURANT. A building wherein food is prepared and served in ready to eat form to the public for human consumption. The term restaurant shall include cafe, cafeteria, grill, pizza parlor, diner, snack shop, hamburger shop and steak house.
- UUU. RESTAURANT, DRIVE-IN. An establishment whose primary purpose is the sale, dispensing of service of food, refreshments or beverage in automobiles, including those establishments where customers may serve themselves, except that this shall not be construed as to include what is commonly called a cafeteria.
- VVV. SALVAGE OR JUNK YARD. A building or premise where junk, waste, inoperable motor vehicles or discarded and salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, crushed, handled or prepared for recycling which shall include auto wrecking yards, but shall not include retail secondhand furniture stores or the purchase and storage of used or salvaged materials as a part of a manufacturing operation.
- WWW. SERVICE FLOOR AREA. The total floor area of a building exclusive of stairways, restrooms, storage rooms, hallways, or other areas which are not regularly used by visitors, clients, customers, patients or patrons in their normal everyday use of the building.



- XXX. SIGN. Any device which shall display or include any letter, word, model, banner, flag, pennant, insignia, device, or representation used as, or which is in the nature of, an advertisement or announcement which directs attention to an object, product, place, activity, person, institution, organization, or business, but shall not include any display of official notice or official flag.
- YYY. SIGHT TRIANGLE. An area at a street intersection in which nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of 2-1/2 feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, 90 feet in each direction along the centerline of the streets.
- ZZZ. At the intersection of major or arterial streets, the 90-foot distance shall be increased to 120 feet for each arterial leg of the intersection.
- AAAA. SPECIAL USE PERMIT. A special use permit is a use that would not be appropriate generally throughout a zoning district without restrictions, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.
- BBBB. STABLE, PRIVATE. An accessory building and premises for the keeping of horses, ponies, mules or cows, owned by occupants of the premises, and not kept for remuneration, hire or sale.
- a. STABLE, PUBLIC. A stable other than a private or riding stable as defined herein.
  - b. STABLE, RIDING. A structure and premises in which horses, ponies, or mules, used exclusively for pleasure riding or driving, are housed, boarded, or kept for remuneration, hire or sale.
  - c. STORY. That part of a building included between the surface of one floor and the surface of the floor next above, or if there be no floor above, that part of the building which is above the surface of a floor and the ceiling next above. A top story attic is a half story when the main line of the eaves is not above the middle of the interior height of such story. The first story is a half story when between fifty and seventy-five percent of the area of its exterior walls are exposed to outside light and air entirely above grade and which exterior walls contain windows or doors permitting the entrance of daylight and outside air. When less than fifty percent of the area of the walls of the first story is exposed to outside light and air entirely above grade, that story shall be classed as a basement and in the case of multiple family dwellings may not be occupied as a residence by other than a caretaker or manager.
  - d. STREET. A right-of-way which affords principal means of vehicular access to property abutting thereon.

- e. STREET LINE. The dividing line between the street right-of-way and the abutting property.
- f. STRUCTURE. Anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground; including, but not limited to signs, and excepting customary utility poles, retaining walls and boundary fences.
- g. STRUCTURAL ALTERATIONS. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders.
- h. TOTAL FLOOR AREA. The square foot area of a building, including accessory building, measured from outside wall surfaces, and including garages, porches, utility rooms, stairways, recreation rooms, storage rooms, but excluding un-roofed balconies and patios.
- i. TOURIST CABIN OR MOTEL. A building or buildings containing in the aggregate, on one undivided tract or parcel of land, a group of individual private units, each provided with separate sleeping room or rooms, having both lavatory and toilet facilities, designed and to be used primarily for transient guests.
- j. VARIANCE. A variation from a specific requirement in this Ordinance, as applied to a specific piece of property, as distinct from rezoning.
- k. YARD. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the least horizontal distance between the lot line and the building shall be used.
- l. YARD, FRONT. A yard across the full width of the lot extending from the front line of the main building to the front line of the lot.
- m. YARD, REAR. A yard between the rear lot line and the rear line of the main building and the side lot lines.
- n. YARD, SIDE. A yard between the main building and the adjacent side line of the lot, and extending entirely from a front yard to the rear yard.
- o. ZONING AREA. The area that is zoned as set out on the official zoning map filed of record.
- p. ZONING REGULATION. The term zoning regulation or this or these regulations shall mean the requirements stipulated in the regulations herewith attached.

16-405 UNDEFINED WORDS. Words or terms not herein defined shall have their ordinary meaning in relation to the context.

